



DEPARTMENT OF AGRICULTURE

Rural Utilities Service

[Docket Number RUS-20-ELECTRIC-0045]

Announcement of Application Deadlines and Requirements for Section 313A

Guarantees for Bonds and Notes Issued for Utility Infrastructure Purposes for Fiscal Year (FY) 2021

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Solicitation of Applications (NOSA)

SUMMARY: The Rural Utilities Service (RUS), an agency of the United States Department of Agriculture (USDA), announces the application window and requirements and \$750 million in loan funding that is available for Fiscal Year (FY) 2021 under the Guarantees for Bonds and Notes Issued for Utility Infrastructure Purposes Program (the 313A Program), authorized under the Rural Electrification Act of 1936, as amended (the RE Act). Successful applications will be selected by the Agency for funding and subsequently awarded. All applicants are responsible for any expenses incurred in developing their applications.

DATES: Completed applications must be received, or post marked by RUS no later than 5:00 p.m. Eastern Daylight Time (EDT) **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: Applicants are required to submit one original and two copies of their loan application to the U.S. Department of Agriculture, Rural Utilities Service, Electric Program, ATTN: Amy McWilliams, Program Advisor, 1400 Independence Avenue, SW, STOP 1560, Room 4137D-S, Washington, DC 20250-1560.

FOR FURTHER INFORMATION CONTACT: Amy McWilliams, Program Advisor,
1400 Independence Avenue, SW, STOP 1560, Room 4137D-S, Washington, DC 20250-
1560. Telephone: (202) 205-8663; fax: (844) 749-0736; or e-mail:
amy.mcwilliams@usda.gov.

SUPPLEMENTARY INFORMATION:

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs in the Office of Management and Budget designated this action as a major rule, as defined by 5 U.S.C. 804(2), because it will result in an annual effect on the economy of \$100,000,000 or more. Accordingly, there will be a mandatory 60-day delay in effectiveness to award loan funds. However, applications will be accepted for 60 days beginning **[INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]** as stated in the DATES section of this NOSA.

Overview

Federal Agency: Rural Utilities Service, USDA.

Funding Opportunity Title: Guarantees for Bonds and Notes Issued for Utility Infrastructure Purposes for Fiscal Year (FY) 2021.

Announcement Type: Guarantees for Bonds and Notes.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.850.

Due Date for Applications: Completed applications must be received or post marked by RUS no later than 5:00 p.m. Eastern Daylight Time (EDT) **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

Items in Supplementary Information

I. Funding Opportunity Description.

II. Award Information.

III. Eligibility Information.

IV. Fiscal Year 2021 Application and Submission Information.

V. Application Review Information.

VI. Issuance of Guarantee.

VII. Guarantee Agreement.

VIII. Reporting Requirements.

IX. Award Administration Information.

X. National Environmental Policy Act Certification.

XI. Other Information and Requirements.

XII. Agency Contacts: website, phone, fax, email, contact name.

XIII. Non-discrimination Statement: USDA non-discrimination statement, how to file a complaint, persons with disabilities.

I. Funding Opportunity Description

A. Purpose and Objectives of the 313A Program.

The purpose of the 313A Program is to make guaranteed loans to selected applicants (each referred to as “Guaranteed Lender” in this NOSA) that are to be used (i) to make utility infrastructure loans or (ii) to refinance bonds or notes issued for such purposes to a borrower that has at any time received, or is eligible to receive, a loan under the RE Act. Each applicant must provide a statement on how it proposes to use the proceeds of the guaranteed bonds, and the financial benefit it anticipates deriving from participating in the program pursuant to 7 CFR 1720.6(a)(3), or its equivalent in any subsequent regulation. Objectives may include, but are not limited to the annual savings to be realized by the

ultimate borrower(s) as a result of the applicant's use of lower cost loan funds provided by the Federal Financing Bank (FFB) and guaranteed by RUS.

The Agriculture Improvement Act of 2018 (2018 Farm Bill) modified the 313A Program by amending the RE Act to allow proceeds of guaranteed bonds awarded under this NOSA to be used to make broadband loans, or to refinance broadband loans made to a borrower that has received, or is eligible to receive, a broadband loan under Title VI of the RE Act. As a result, to the extent that the proceeds of guaranteed bonds are to be used to fund or refinance broadband loans that were not made by RUS ("Non Broadband Loans"), such proceeds may only be used for Non Broadband Loans that would meet the amended eligibility requirements of Title VI pursuant to the 2018 Farm Bill.

The 2018 Farm Bill has also modified the 313A Program to allow the proceeds of guaranteed loans made under this NOSA to be used by the Guaranteed Lender to fund projects for the generation of electricity.

B. Statutory Authority.

The 313A Program is authorized by Section 313A of the Rural Electrification Act of 1936, as amended (7 U.S.C. 940c-1) and is implemented by regulations located at 7 CFR part 1720, in accordance with the 2018 Farm Bill. The Administrator of RUS (the Administrator) has been delegated responsibility for administering the 313A Program.

C. Definition of Terms.

The definitions applicable to this NOSA are currently published at 7 CFR 1720.3, or its equivalent in any new regulation issued by RUS.

D. Application Awards.

RUS will review and evaluate applications received in response to this NOSA based on the regulations at 7 CFR 1720.7, and as provided in this NOSA.

II. Award Information

Type of Awards: Guaranteed Loans.

Fiscal Year Funds: FY 2021.

Available Funds: \$750 million. Should additional funding become available this fiscal year, the RUS reserves the right to increase the total funds available under this notice.

Award Amounts: RUS anticipates making multiple guarantees under this NOSA. The number, amount, and terms of awards under this NOSA will depend in part on the number of eligible applications and the amount of funds requested. In determining whether or not to make an award, RUS will take overall program policy objectives into account.

Due Date for Applications: See “SUPPLEMENTARY INFORMATION” above.

Award Date: Awards will be made on or before September 30, 2021, but no earlier than **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

Schedule of Loan Repayment: The amortization method for the repayment of the guaranteed loan shall be repaid by the Guaranteed Lender: (i) in periodic installments of principal and interest, (ii) in periodic installments of interest and, at the end of the term of the bond or note, as applicable, by the repayment of the outstanding principal, or (iii) through a combination of the methods described in (i) and (ii) above. The amortization method will be agreed to by RUS and the Guaranteed Lender.

III. Eligibility Information

A. Eligible Applicants

1. *To be eligible to participate in the 313A Program, a Guaranteed Lender must be:*

a. A bank or other lending institution organized as a private, not-for-profit cooperative association, or otherwise organized on a non-profit basis;

b. Able to demonstrate to the Administrator that it possesses the appropriate expertise, experience, and qualifications to make loans for utility infrastructure purposes (to the extent that the applicant intends to use the guaranteed loan funds for such purpose); and

c. Able to demonstrate to the Administrator that it has bonds or notes eligible for refinancing under the 313A Program (to the extent that the applicant intends to use the guaranteed loan funds for such purpose).

2. To be eligible to receive a guarantee, a Guaranteed Lender's bond must meet the following criteria:

a. The Guaranteed Lender must furnish the Administrator with a certified list of the principal balances of eligible loans outstanding and certify that such aggregate balance is at least equal to the sum of the proposed principal amount of guaranteed bonds to be issued, including any previously issued guaranteed bonds outstanding; and

b. The guaranteed bonds to be issued by the Guaranteed Lender would receive an underlying investment grade rating from a Rating Agency, without regard to the guarantee.

3. A lending institution's status as an eligible applicant does not assure that the Administrator will issue the guarantee sought in the amount or under the terms requested, or otherwise preclude the Administrator from declining to issue a guarantee.

B. Other Eligibility Requirements

Applications will only be accepted from lenders that serve rural areas defined in 7 CFR 1710.2(a) as (i) any area of the United States, its territories and insular possessions (including any area within the Federated States of Micronesia, the Marshall Islands, and the Republic of Palau) other than a city, town, or unincorporated area that has a population of greater than 20,000 inhabitants; and (ii) any area within a service area of a borrower for which a borrower has an outstanding loan as of June 18, 2008, made under titles I through V of the Rural Electrification Act of 1936, as amended (7 U.S.C. 901-950cc-2). For initial

loans to a borrower made after June 18, 2008, the “rural” character of an area is determined at the time of the initial loan to furnish or improve service in the area.

IV. Fiscal Year 2021 Application and Submission Information

A. Applications

All applications must be prepared and submitted in accordance with this NOSA and 7 CFR part 1720 (available online at <http://www.ecfr.gov/cgi-bin/text-idx?SID=9295e45c9a0f6a857d800fbec5dde2fb&mc=true&node=pt7.11.1720&rgn=div5>).

B. Content and Form of Submission

In addition to the required application specified in 7 CFR 1720.6, all applicants must submit the following additional required documents and materials:

1. System for Awards Management.

All program applicants must be registered in the System for Awards Management (SAM) prior to submitting an application, unless determined exempt under 2 CFR 25.110. Loan recipients must maintain an active SAM registration with current information at all times during which it has an active Federal award or an application under consideration by the Agency. The applicant must ensure that the information in the database is current, accurate, and complete. Applicants must ensure they complete the Financial Assistance General Certifications and Representations in SAM;

2. Restrictions on Lobbying.

Applicants must comply with the requirements relating to restrictions on lobbying activities. (See 2 CFR part 418, and 7 CFR 1710.125.) This form is available at <https://www.gsa.gov/forms-library/disclosure-lobbying-activities>;

3. Uniform Relocation Act assurance statement.

Applicants must comply with 49 CFR part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. (See 7 CFR 1710.124.) This form is available at <http://www.rd.usda.gov/resources/directives/electric-sample-documents;>

4. Federal debt delinquency requirements.

This report indicates whether the applicants are delinquent on any Federal debt (See 7 CFR 1710.126 and 7 CFR 1710.501(a)(13)). This form (the Federal Debt Delinquency Certification) is available at <http://www.rd.usda.gov/resources/directives/electric-sample-documents;>

5. Form RD 400-4, Assurance Agreement.

Applicants must submit a non-discrimination assurance commitment to comply with certain regulations on non-discrimination in program services and benefits and on equal employment opportunity as set forth in 7 CFR parts 15 and 15b and 12 CFR part 202, 7 CFR 1901, Subpart E., DR4300-003, DR4330-0300, DR4330-005. This form is available at: <http://www.rd.usda.gov/resources/directives/electric-sample-documents;> and

6. Articles of Incorporation and Bylaws

See 7 CFR 1710.501(b)(1). These are required if either document has been amended since the last loan application was submitted to RUS, or if this is the applicant's first application for a loan under the RE Act.

C. Supplemental Documents for Submission.

1. Pro forma financial statements including cash flow projections and assumptions:

Each applicant must include five-year pro forma income statements, balance sheets and cash flow projections or business plans and clearly state the assumptions that underlie the

projections, demonstrating that there is reasonable assurance that the applicant will be able to repay the guaranteed loan in accordance with its terms (See 7 CFR 1720.6(a)(4)).

2. Pending litigation statement:

A statement from the applicant's counsel listing any pending litigation, including levels of related insurance coverage and the potential effect on the applicant, must be submitted to RUS.

V. Application Review Information

A. Application Evaluation

1. Administrator review.

a. Each application will be reviewed by the Administrator to determine whether it is eligible under 7 CFR 1720.5, the information required under 7 CFR 1720.6 is complete, and the proposed guaranteed bond complies with applicable statutes and regulations. The Administrator can at any time reject an application that fails to meet these requirements.

b. Applications will be subject to a substantive review, on a competitive basis, by the Administrator based upon the evaluation factors listed in 7 CFR 1720.7(b).

2. Decisions by the Administrator.

The Administrator may limit the number of guarantees made to a maximum of five per year, to ensure a sufficient examination is conducted of applicant requests. RUS will notify the applicant in writing of the Administrator's approval or denial of an application.

Approvals for guarantees will be conditioned upon compliance with 7 CFR 1720.4 (in accordance with the 2018 Farm Bill) and 7 CFR 1720.6. The Administrator reserves the discretion to approve an application for an amount that was less than requested.

B. Independent Assessment.

Before a guarantee decision is made by the Administrator, the Administrator shall request that FFB review the rating agency determination required by 7 CFR 1720.5(b)(2) as to whether the bond or note to be issued would receive an investment grade rating without regard to the guarantee.

VI. Issuance of the Guarantee

The requirements under this section must be met by the applicant prior to the endorsement of a guarantee by the Administrator (See 7 CFR 1720.8.)

VII. Guarantee Agreement

Each Guaranteed Lender will be required to enter into a Guarantee Agreement with RUS that contains the provisions described in 7 CFR 1720.8 (Issuance of the Guarantee), 7 CFR 1720.9 (Guarantee Agreement), and 7 CFR 1720.12 (Reporting Requirements). The Guarantee Agreement will also obligate the Guaranteed Lender to pay, on an annual basis, a guarantee fee equal to 30 basis points (0.30 percent) of the outstanding principal amount of the guaranteed loan (See 7 CFR 1720.10).

VIII. Reporting Requirements

Guaranteed Lenders are required to comply with the financial reporting requirements and Pledged Collateral review and certification requirements set forth in 7 CFR 1720.12.

IX. Award Administration Information

Award Notices

RUS will send a commitment letter to an applicant once the loan is approved. Applicants must accept and commit to all terms and conditions of the loan which are requested by RUS and FFB as follows:

1. *Compliance conditions.*

In addition to the standard conditions placed on the 313A Program or conditions requested by RUS to ensure loan security and statutory compliance, applicants must comply with the following conditions:

a. Each Guaranteed Lender selected under the 313A Program will be required to post collateral for the benefit of RUS in an amount at least equal to the aggregate amount of loan advances made to the Guaranteed Lender under the 313A Program.

b. The pledged collateral (the Pledged Collateral) shall consist of outstanding notes or bonds payable to the Guaranteed Lender (the Eligible Securities) and shall be placed on deposit with a collateral agent for the benefit of RUS. To be deemed Eligible Securities that can be pledged as collateral, the notes or bonds to be pledged (i) cannot be classified as non-performing, impaired, or restructured under generally accepted accounting principles; special mention loans as defined by the Office of the Comptroller of the Currency; or any other elevated risk categories used by the Guaranteed Lender, (ii) must be free and clear of all liens other than the lien created for the benefit of RUS, (iii) cannot be comprised of more than 30 percent of bonds or notes from generation and transmission borrowers, (iv) cannot have more than 5 percent of notes and bonds be from any one particular borrower and (v) cannot be unsecured notes.

c. The Guaranteed Lender will be required to place a lien on the Pledged Collateral in favor of RUS (as secured party) at the time that the Pledged Collateral is deposited with the collateral agent. RUS will have the right, in its sole discretion, within 14 business days of receipt of pledged collateral report to reject and require the substitution of any Pledged Collateral that the Guaranteed Lender deposits as collateral with the collateral agent. Prior to receiving any advances under the 313A Program, the Guaranteed Lender will be required to enter into a pledge agreement, satisfactory to RUS, with a banking institution serving as collateral agent.

d. The Guaranteed Lender will be required to agree not to take any action that would have the effect of reducing the value of the pledged collateral below the level described above.

e. Applicants must certify to the RUS, the portion of their loan portfolio that is:

(1) Refinanced RUS debt;

(2) Debt of borrowers for whom both RUS and the applicants have outstanding loans;
and

(3) Debt of borrowers for whom both RUS and the applicant have outstanding concurrent loans pursuant to Section 307 of the RE Act, and the amount of Eligible Loans.

2. Compliance with Federal Laws.

Applicants must comply with all applicable Federal laws and regulations.

a. This obligation is subject to the provisions contained in the Consolidated Appropriations Act, 2021, Public Law 116-260, Division A, Title III, Sections 744 and 745, as amended and/or subsequently enacted for USDA agencies and offices, regarding the prohibition against RUS making awards to applicants having corporate felony convictions within the past 24 months or to applicants having corporate federal tax delinquencies.

b. An authorized official within your organization must execute, date, and return the loan commitment letter and the Assurance Regarding Felony Conviction or Tax Delinquent Status for Corporate Applicants (Form AD-3031) to RUS within 14 calendar days from the date of the loan commitment letter, or by September 24, 2021, if the loan is approved after September 9, 2021; otherwise, the commitment will be void. This form is available at <https://www.ocio.usda.gov/document/ad3031>.

c. Uniform Commercial Code (UCC) Filing. The Borrower must provide RUS with evidence that the Borrower has filed the UCC financing statement required by 7 CFR 1720.8(a)(2). Upon filing of the appropriate UCC financing statement, the Guaranteed Lender will provide RUS with a perfection opinion by outside counsel which demonstrates that RUS's security interest in the pledged collateral under the Pledge Agreement is perfected.

d. Additional conditions may be instituted for future obligations.

X. National Environmental Policy Act Certification

For any proceeds to be used to refinance bonds and notes previously issued by the Guaranteed Lender for RE Act purposes that are not obligated for specific projects, RUS has determined that these financial actions will not individually or cumulatively have a significant effect on the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and its implementing regulations at 40 CFR parts 1500-1508. However, for any new projects funded through the 313A Program, applicants must consult with RUS and comply with the Agency regulations at 7 CFR part 1970.

XI. Other Information and Requirements

Applications must contain all the required elements of this NOSA, and all standard requirements as required by 7 CFR part 1720. Additional supporting data or documents may be required by RUS depending on the individual application or financial conditions. All applicants must comply with all Federal laws and regulations.

XII. Agency Contacts

A. *Website*: <https://www.rd.usda.gov/contact-us/national-office/rus>.

B. *Phone*: (202) 720-9540.

C. *E-mail*: amy.mcwilliams@usda.gov

D. *Main point of contact:* Amy McWilliams, Program Advisor; Phone: (202) 720 9540 or (202) 205-8663;

XIII. USDA Non-Discrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotope, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339.

Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027. Individuals wishing to file a discrimination complaint may use the form available at <https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint> and at any USDA office, or may write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by:

(1) Mail: U.S. Department of Agriculture

Office of the Assistant Secretary for Civil Rights

1400 Independence Avenue, SW

Washington, DC 20250-9410; or

(2) Email: OAC@usda.gov.

USDA is an equal opportunity provider, employer, and lender.

(Authority: 7 U.S.C. 940c-1)

Christopher A. McLean,

Acting Administrator,

Rural Utilities Service.

[FR Doc. 2021-06675 Filed: 3/31/2021 8:45 am; Publication Date: 4/1/2021]